



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

#### **49 CFR Part 614**

**[Docket No. FTA–2019–000X]**

**RIN 2132-AB37**

### **Transportation Infrastructure Management**

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking rescinds an FTA regulation that cross-references the Management and Monitoring Systems regulation for the Federal Highway Administration (FHWA). The statutory basis for FHWA’s regulation was rescinded by legislation in 2012.

**DATES:** This final rule is effective on [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mark Montgomery, Office of Chief Counsel, (202) 366-1017 or [mark.montgomery@dot.gov](mailto:mark.montgomery@dot.gov). Office hours are from 9 a.m. to 5:30 p.m., ET, Monday through Friday, except Federal holidays.

### **SUPPLEMENTARY INFORMATION:**

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## **Background**

Part 614 of title 49, Code of Federal Regulations, cross-references the Management and Monitoring Systems regulation for the Federal Highway Administration (FHWA) at 23 CFR part 500. That part implements section 1034 of the Intermodal Surface Transportation Efficiency Act (Pub. L. 102-240) (ISTEA), which amended title 23, United States Code, by adding section 303 (Section 303). Section 303 required the Secretary of Transportation to promulgate regulations for State development, establishment, and implementation of systems for managing: Highway pavement of Federal-aid highways (PMS); bridges on and off Federal-aid highways (BMS); highway safety (SMS); traffic congestion (CMS); public transportation facilities and equipment (PTMS); intermodal transportation facilities and systems (IMS); and a system for monitoring highway and public transportation facilities and equipment (TMS). However, the National Highway System Designation Act of 1995 (NHS Act) amended section 303 to allow a State to elect not to implement, in whole or in part, any one or more of the management systems required under the section, except for CMS in transportation management areas (TMA), and removed the management system certification and sanction requirements. As a result, FTA and FHWA issued a final rule on December 19, 1996, 16 FR 67166–175, which reflected this State option and contained only minimum requirements for those systems that a State could choose to implement under the provisions of section 303.

Since the 1996 update to 23 CFR part 500, section 1519(b) of the Moving Ahead for Progress in the 21st Century (MAP-21) Act (Pub. L. 112-141) repealed section 303, which is the statutory basis for the regulation. Accordingly, FTA is issuing this final rule to rescind 49 CFR part 614, which cross-references 23 CFR part 500. This deregulatory action will not negatively

impact safety, because congestion management, the only management system required under part 500, is still mandated by 23 CFR part 450.

### **Discussion of the Changes**

This action rescinds 49 CFR part 614, which cross-references FHWA's Management and Monitoring Systems regulation at 23 CFR part 500, because the statutory basis for FHWA's regulation, 23 U.S.C. 303, was repealed by MAP-21. While 49 CFR part 614 cites 49 U.S.C. 5303-5305 as additional statutory authority, the requirements set forth in those statutes that overlap with the now-repealed 23 U.S.C. 303 are implemented through other FTA regulations. Of the four provisions of section 303 and 23 CFR part 500 that apply to FTA—IMS, CMS, PTMS, and TMS—only CMS is required explicitly by FTA statute, at 49 U.S.C. 5303(k)(3). Whereas 49 CFR 500.105 requires the metropolitan transportation planning process to include a CMS, the regulations at 23 CFR 450.322 (cross-referenced by 49 CFR part 613) also effectively implement the CMS requirement, which will continue to be imposed after this rule becomes effective.

Moreover, although not explicitly required by any FTA statute, current regulations cover management systems like IMS and PTMS. For example, the metropolitan and statewide planning processes require the integrated management and operation of the intermodal transportation system, similar to IMS, at 49 U.S.C. 5303(c)(2) and 5304(a)(2), and 49 CFR part 613 (cross-referencing 23 CFR part 450). Further, transit asset management incorporates much of the PTMS requirement at 49 U.S.C. 5326, and 49 CFR part 625. As a result, the requirements set forth in 49 CFR part 614 are either superfluous or duplicative.

### **Good Cause for Dispensing with Notice and Comment and Delayed Effective Date**

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment procedure if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. Additionally, 5 U.S.C. 553(d) provides that an agency may waive the 30-day delayed effective date upon finding of good cause.

Section 1519(b) of MAP-21 repealed section 23 U.S.C. 303 to remove the requirement that states implement the management systems enumerated in 23 CFR part 500. Because 49 CFR part 614 cross-references this regulation, FTA finds good cause that notice and comment for this rule is unnecessary due to the nature of the revisions (i.e., the rule simply carries out the nondiscretionary statutory language found in MAP-21). The statutory language does not require regulatory interpretation to carry out its intent, and comments cannot alter the regulation given that the statute abrogated its purpose. Further, the delayed effective date is unnecessary because the removal of the management systems requirement was already made effective by MAP-21. Accordingly, FTA finds good cause under 5 U.S.C. 553(b)(3)(B) and (d)(3) to waive notice and opportunity for comment and the delayed effective date.

## **RULEMAKING ANALYSES AND NOTICES**

**Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Department of Transportation (DOT) Regulatory Policies and Procedures.**

FTA has determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of DOT regulatory policies and procedures. This action complies with Executive Orders 12866, 13563 and 13771 to improve regulation.

**Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)**

This final rule is considered an E.O. 13771 deregulatory action.

### **Regulatory Flexibility Act**

Because FTA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601–612) do not apply. FTA evaluated the effects of this action on small entities and determined the action would not have a significant economic impact on a substantial number of small entities. FTA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### **Unfunded Mandates Reform Act of 1995**

FTA has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This rule does not include a Federal mandate that may result in expenditures of \$155.1 million or more in any 1 year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal Transit Act permits this type of flexibility.

### **Executive Order 13132 (Federalism Assessment)**

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action

has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

#### **Executive Order 12372 (Intergovernmental Review)**

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. This E.O. applies because State and local governments would be directly affected by the regulation. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.505, Metropolitan Transportation Planning and State and Non-Metropolitan Planning and Research, for further information.

#### **Paperwork Reduction Act**

Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FTA has analyzed this rule under the Paperwork Reduction Act and believes that it does not impose additional information collection requirements for the purposes of the Act above and beyond existing information collection clearances from OMB.

#### **National Environmental Policy Act**

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3)

those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

#### **Executive Order 12630 (Taking of Private Property)**

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rule effects a taking of private property or otherwise has taking implications under Executive Order 12630.

#### **Executive Order 12988 (Civil Justice Reform)**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Executive Order 13045 (Protection of Children)**

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

#### **Executive Order 13175 (Tribal Consultation)**

FTA has analyzed this rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

#### **Executive Order 13211 (Energy Effects)**

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

#### **Executive Order 12898 (Environmental Justice)**

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (available online at <https://www.govinfo.gov/content/pkg/FR-2012-05-10/pdf/2012-11309.pdf>) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (available online at [http://www.fta.dot.gov/documents/FTA\\_EJ\\_Circular\\_7.14-12\\_FINAL.pdf](http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf)).

FTA has evaluated this action under the Executive Order, the DOT Order, and the FTA Circular. FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

#### **List of Subjects in 49 CFR Part 614**

Grant programs—transportation, Mass transportation.

Issued in Washington, DC, under authority delegated in 49 CFR 1.90:

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K. Jane Williams,  
Acting Administrator.

**PART 614—[REMOVED AND RESERVED]**

In consideration of the foregoing, and under the authority of Public Law 112-141, amend  
49 CFR chapter VI by removing part 614.

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